ARTICLE APPEARED
ON PAGE 15C

THE ATLANTA JOURNAL - CONSTITUTION
7 May 1978

AGENCIES RELUCTANT TO DECLASSIFY DATA

U.S. Security Leaks Going Unpunished

EDITOR'S NOTE: A Senate Intelligence subcommittee says it can find no way within the Constitution to punish federal employees who "leak" classified information or intelligence secrets. W. Donald Stewart, an FBI agent for 14 years, was espionage supervisor for nine years and later the Pentagon's chief investigator of leaks (such as the Pentagon papers). He believes the job can be done.

By W. DONALD STEWART
Written for United Press International

WASHINGTON — We caught red handed leakers and serious security risks but many were let off scot-free because of "Catch 9" in existing procedures.

Catch 9 is the ninth of 11 questions the Justice Department asks of agencies which have had security leaks before an FBI investigation leading toward prosecution can be started.

The question involves the ability of the agency to declassify material pertinent to the leak. If it is unable to declassify, Justice routinely refuses to investigate.

Actually, past practice shows that the whole process is rubber-stamped because the agency is usually reluctant to declassify the material in question, Justice is more than glad to get rid of it and the FBI is not begging for more work. So the culprits go unpunished — and often go on to promotions.

Leaks to the media and leaks by members of Congress have always frustrated prosecution because the Justice Department must show the data provided was transmitted "with the intent or with reason to believe that it will be used to the injury of the United States or to the advantage of a foreign nation."

Here is where the law might be changed: the person leaking the material must be aware that enemy agents will obtain such information from newspapers, magazines or television.

Many of the problems relative to press leaks could be solved by more expert and aggressive investigation of the leaker. Investigations should be followed through to the end and not killed in midstream or even before started. If an immediate prosecution can not be expected because of the nature of the material involved, often it is sufficient to identify the culprit responsible for the leak and remove that person from whatever he or she has access to. Punitive administrative action may pose problems, but most certainly some form of corrective action could be taken.

The subcommittee has failed to bite the bullet in recognizing that members of Congress and their staffs are quite often the source of the most disastrous leaks to the press. Sen. Garry Hart, D-Colo., quoted a 1971 CIA study which reflects that less than 5 percent of leaks have been attributed to members of Congress. I don't know how the CIA got that figure.

But even if members of Congress leaked only 1 percent, that 1 percent constituted the most devastating disclosures of the past decade. Other congressional leaks do more to weaken confidence in members of Congress than harm to our defenses — such as the leaks from the old House Intelligence Committee and the House Assassinations Committee.

The Justice Department itself is prone to leaks. Has Justice ever asked the FBI to investigate in-house leaks? Never.

Catch 9 is not as formidable an obstacle as reported at the subcommittee hearings.

If a prosecution can't be pursued immediately because of the damage declassification would cause, the case can always be put on the back burner. Then perhaps a year or two later, when the concerned data can be safely declassified, Justice could pursue the case. This is never done now.

Present practice is to allow the agency to decide whether the data can be declassified. This could be better done by a body like the National Security Council which has a total overview of our intelligence posture.

It has also been suggested that classified material could be studied by a judge in private to decide whether prosecution could go forward without security damage.

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We are inviting leaks because of lax screening of the people with access to secrets.

The press does not have access but reporters are often given off the record "backgrounders" based on classified information and sometimes are shown Top Secret material.

In 1969, a vice admiral compromised our 10-year lead over the Soviets in anti-submarine warfare techniques by giving a backgrounder without stipulating it was off the record. Fourteen newspapers ran the story.

All members of Congress are awarded Top Secret clearance automatically. Personal weaknesses and misconduct are overlooked which would cause a person in a government department to be cited as a possible security risk and barred from classified data.

National Agency Checks of enlisted military personnel as now conducted are practically worthless because they are based on the assumption that names, birthdates, and other data as given are authentic. If nothing derogatory shows up in FBI or other files under those names, the person is cleared.

The required documentation can be fabricated: 500 Panamanians have illegally entered the Marine Corps, for example.

Then there was the case about two years ago of Thomas Ragner Faernstrom who was at first found to have re-enlisted fictitiously 10 times during a 13-month period between November 1973 and January 1975, collecting approximately $30,000 in bonuses. Subsequent interviews with him revealed he had done this over a 10-year period and bilked the U.S. government out of $600,000. A check of his fingerprints would have uncovered him at any stage.

But there's the flaw — fingerprints of enlistees are not checked with the central FBI files. The FBI checks fingerprints only under the name submitted. It does not have fresh prints to compare with others on file, so a fake name can short circuit the process.

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Criteria differ for Top Secret clearance in the FBI, CIA, Defense Department, Civil Service and from agency to